

73640-A

Wazlashil Johnson

§

In the County Court
of Smith County, Texas

v.

§

NewRez LLC d/b/a Shellpoint Mortgage
Servicing

§

§

County Court at Law No. 2

SHELLPOINT'S ANSWER

NewRez LLC dba Shellpoint Mortgage Servicing (**Shellpoint**) generally denies the allegations in Wazlashil Johnson's petition.

I. AFFIRMATIVE DEFENSES

1. Shellpoint is not liable because Ms. Johnson failed to plead a viable claim.
2. Shellpoint is not liable because of Ms. Johnson's or Richard Johnson's contributory negligence.
3. Shellpoint is not liable because the terms of the agreement Ms. Johnson seeks to enforce are too indefinite.
4. Shellpoint is not liable because of an application of the economic loss rule or because a contract between the parties covers the subject matter of the dispute.
5. Shellpoint is not liable because of Ms. Johnson's or Richard Johnson's unclean hands.
6. Shellpoint is not liable because of the application of the statute of frauds or parole evidence rule.
7. Shellpoint is not liable because of the expiration of a limitations period.
8. Ms. Johnson's claims are barred, in whole or in part, by the doctrine of waiver, estoppel, privilege, consent, or ratification.
9. Shellpoint is not liable because Ms. Johnson lacks standing to bring her claims.
10. Ms. Johnson's claims fail to the extent no private right of action is authorized.
11. Shellpoint is not liable because of Ms. Johnson's or Richard Johnson's prior breach.

12. Shellpoint is not liable because of an ambiguity in the agreement Ms. Johnson seeks to enforce.

13. Shellpoint is not liable because the actions Ms. Johnson complains of, if in error, were the result of a bona fide error.

14. Shellpoint is entitled to an offset against any liability for damages for, among other things, the amount of the debt, the value of the use and occupation of the subject property, Shellpoint's attorneys' fees incurred in this suit, and any amounts Ms. Johnson recovered pursuant to the settlement of any claims related to this matter.

15. Shellpoint is not liable because Ms. Johnson failed to mitigate her damages.

16. Shellpoint is not liable because Ms. Johnson's acts or omissions caused or contributed to her alleged injury. In the event the trier of fact determines Ms. Johnson suffered any compensable damages, Shellpoint invokes chapter 33 of the Texas Civil Practice & Remedies Code and request the trier of fact determine the proportion of responsibility for said damages by Ms. Johnson, Shellpoint, and responsible third-parties, if any, and to grant judgment against Shellpoint, if at all, for only those damages for which it is found to be proportionately responsible.

17. Ms. Johnson's claims fail to the extent they were settled or released.

18. Ms. Johnson's claims fail to the extent they are moot.

19. Shellpoint is not liable because of a failure of a condition precedent, including Ms. Johnson's or Richard Johnson's failure to comply with the terms of the loan by, among other things, paying ad valorem taxes assessed against the property, making regular monthly payments of principal, interest and, when applicable, escrow, submitting a complete application for loss mitigation, and providing good, sufficient, and timely notice of her or his claims or demands.

20. Ms. Johnson's request for punitive damages, if any, is barred by the due process clause or the excessive fines clause of the United States Constitution, Texas Civil Practice & Remedies Code chapter 41, or any other applicable law.

II. PRAYER

Shellpoint requests the court enter a judgment Ms. Johnson takes nothing and award Shellpoint such further relief to which it may be entitled.

Date: December 9, 2021

Respectfully submitted,

s/ Walter McInnis

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ATTORNEYS FOR SHELLPOINT

CERTIFICATE OF SERVICE

A true and correct copy of this document was served on December 9, 2021 as follows:

VIA TEXFILE AND CERTIFIED MAIL / RRR

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s/ Taylor Perona

Taylor Perona